



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: DBA Systems, Inc.

File: B-237596

Date: February 23, 1990

Eugene S. Cavallucci, Esq., for the protester.
Andrew De Cicco, for the interested party, ITT Corporation.
Joseph P. Schirard, for the interested party,
Optic-Electronic Corp.
Charles R. Young, for the interested party, Varo Electron
Devices.
Edward J. Korte, Esq., Department of Army, for the agency.
Stephen J. Gary, Esq. and John M. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. In a procurement conducted by a military agency under provisions of the Competition in Competition Act pertaining to mobilization base producers, the usual concern for obtaining full and open competition is secondary to the needs of industrial mobilization; the agency properly may restrict such a procurement to predetermined sources in order to create or maintain their readiness to produce critical supplies, and such restriction will be left to the discretion of the agency where there is no compelling evidence of abuse of that discretion.

2. Allegation that procurement that is restricted to four firms could be expanded to include others is denied; agency did not abuse its discretion in restricting competition for mobilization base purposes and, in any event, agency had reasonable basis for the total package approach it adopted.

DECISION

DBA Systems, Inc., protests its exclusion from the competition under request for proposals (RFP) No. DAAB07-89-R-F113, issued by the Department of the Army as a mobilization base procurement for night vision image intensifier tubes and devices. DBA objects that limiting the competition to the four domestic manufacturers of the tubes is not necessary to

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maintain an industrial base for the solicited items, and that the competition should be broadened to include companies that could produce the night vision devices themselves with tubes obtained from the four manufacturers.

We deny the protest.

The RFP restricts competition to the four domestic firms that manufacture the image intensifier tubes that are the major component of the night vision devices; it was issued after the Army executed a Justification and Approval (J&A) for other than full and open competition, as required by the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(f) (1988).^{1/} The J&A cites as authority for the restricted procurement 10 U.S.C. § 2304(c)(3), which allows a military agency to use other than competitive procedures in awarding a contract to a particular source or sources when such action is necessary to maintain a facility, producer, manufacturer or other supplier available for furnishing property or services in case of a national emergency, or to achieve industrial mobilization.

According to the J&A, the image intensifier tube is the critical component (and the only one involving sophisticated technology) of each night vision device; it is also the most significant cost item in the manufacture of the device. Further, the document states that only the four listed firms have the expertise and capability to meet the government's stringent technical and schedule requirements; that, to minimize risk, the solicitation must be restricted to those companies that have produced image intensifier tubes; that highly trained personnel are required to operate the specialized equipment used in processing and manufacturing the tubes; that the processing techniques, which are unique and peculiar to each manufacturer, are not the property of the government; and that, since significant cost and production efficiencies are realized only when the expensive capital equipment used in the tubes' manufacture is employed on a continuous, round-the-clock basis, large-volume orders are required to maintain a mobilization base for the items and permit a rapid increase in their production during a mobilization.

^{1/} The J&A was executed on August 14, 1989, and a prior synopsis of the procurement in the Commerce Business Daily was immediately amended to indicate that the procurement would be restricted.

DBA objects that, since it and other small businesses have manufactured night vision devices in the past that have met the requirements of this solicitation, there is no reason to limit competition here to the four firms that manufacture the tubes; other firms, as in the past, could simply obtain the tubes and incorporate them into their own night vision devices in full compliance with the RFP's technical requirements. Further, since the tubes are an essential element of the night vision devices, they would have to be purchased by any firm manufacturing the items; thus, the mobilization base for the manufacture of the tubes would be maintained regardless of whether the finished product was made by the tube manufacturers or firms that simply obtained the tubes from them. Finally, the protester asserts that since it is unaware of any changed circumstances that would warrant restricted procurement of these items, which were obtained on a fully competitive basis in the past, it concludes that the use of restricted competition here is an abuse of the agency's discretion to limit competition for industrial mobilization purposes.

As a general matter, military agencies need not obtain full and open competition and may use other than competitive procedures when it is necessary for industrial mobilization purposes to award the contract to a particular source or sources. Therefore, although it is the established policy of this Office to scrutinize closely procurement actions using other than competitive procedures, it is also our view that decisions as to which and how many producers should be included in the mobilization base involve complex judgments that must be left to the discretion of the military agencies absent compelling evidence of an abuse of that discretion. See Carolina Parachute Corp., B-236153, Nov. 16, 1989, 89-2 CPD ¶ 466.

The record here fails to show that the Army abused its discretion. First, we note that, contrary to DBA's assertion, the Army reports that the night vision devices that the agency previously purchased through full and open competition were not the same as the ones being solicited here; rather, they were much older models, and were purchased in much smaller quantities than in the present procurement. Our review of the record confirms this information. Consequently, the fact that DBA and other small businesses manufactured small quantities of devices in the past does not mean, as DBA asserts, that they have demonstrated their ability to manufacture the large volume of sophisticated items being solicited currently.

In any case, the record shows that the prior competitive procurements cited by DBA were for quantities too small to

sustain manufacturers for purposes of maintaining the industrial mobilization base. Thus, even if the devices that were procured competitively in the past were identical to the present ones, the prior procurements have no bearing on the present situation; here, the objective is not to obtain competition but to support the mobilization base. For that purpose, in order to sustain the continuous, capital-intensive manufacturing processes used in the production of the critical tubes, the record shows that steady, large-volume purchases are necessary. Thus, while it may have been appropriate for the Army to solicit smaller firms through competitive procurements where no mobilization concerns were involved, we find that it is equally reasonable for the agency to concentrate its procurement efforts here, where the objective is to support the mobilization base for critical items, on the four firms that have proven they can manufacture the tubes in large volumes.^{2/}

Further, the record indicates that approximately 75 percent of the work and of the cost involved in producing the night vision devices is attributable to the tubes; the protester and other similar firms would be acting merely as assemblers of the devices, while the critical elements are the image intensifier tubes. In our view, structuring the procurement as DBA suggests would reverse the industrial mobilization priorities by assuring a steady stream of business to the assemblers while introducing an element of uncertainty into the production of the more critical item, the image intensifying tubes. An assembler could, for example, split its purchases of tubes into inefficient, uneconomical quantities that would defeat the mobilization base purpose of assuring sustained, high-volume tube manufacturing capability. Thus, while DBA suggests that tube production could be sustained by purchases from assemblers as well as by direct purchases by the Army, we find that in the former arrangement the Army would not be in the same position to control the quantity of tubes manufactured by any one firm, and would therefore have less assurance of a sustained manufacturing base. Moreover, in our view, DBA's approach necessarily would entail additional problems of coordination among the various firms involved that would not arise under the Army's approach, where the same firm would manufacture the tubes and the finished product. These additional difficulties might be acceptable if the goal were

^{2/} DBA does not contend that it can manufacture the tubes, but states only that it can incorporate the tubes into a finished night vision device.

simply to maximize competition; they are not appropriate, however, where the objective is to assure a continuous and secure stream of production for mobilization purposes.

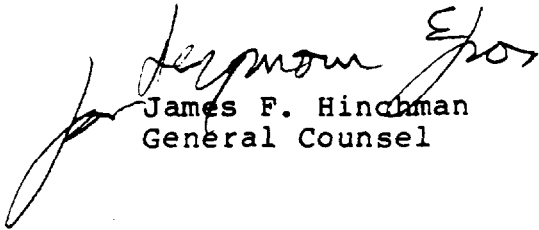
In any event, even if the alternatives suggested by the protester were feasible, it is within the agency's discretion to determine whether and in what manner competition should be restricted for defense mobilization purposes. See Minowitz Mfg. Co., B-228502, Jan. 4, 1988, 88-1 CPD ¶ 1 (agency restriction found proper even where competition was limited to only one firm and the price arguably was higher than if competition were not so restricted). Since we find that the restrictions adopted here are reasonably related to industrial mobilization purposes, we have no reason to object because the Army has not chosen the particular methods suggested by the protester. Id.

We note that, even where, unlike the situation here, full competition is required, we generally have upheld an agency's procurement on the basis of a total package approach (here, combining the procurements for the tubes and the night vision devices), where the agency has reasonably concluded that such an approach is necessary to meet its minimum needs. See Control Data Corp., B-235737, Oct. 4, 1989, 89-2 CPD ¶ 304. Where, as here, a protester in effect contends that acquiring certain items as part of a total package rather than breaking them out unduly restricts competition, we will object only where the agency's choice of a total package approach as necessary to meet its minimum needs lacks a reasonable basis. See Eastman Kodak Co., B-231952 et al., Nov. 8, 1988, 88-2 CPD ¶ 455.

In determining reasonableness in such situations, we have taken into account the efficiencies and economies of scale that would be achieved by the use of a package approach. For example, in a procurement for two items that previously were obtained separately, we held it was proper for the agency to restrict competition to the three firms capable of producing the two items together in a single package, where the total package approach would achieve economies of scale. See IVAC Corp., B-231174, July 20, 1988, 88-2 CPD ¶ 75. Here, although the competition is restricted to four firms, the Army has stated that it anticipates active price competition among the four, as well as price discounts, on the basis of the large quantities of items being procured. We find nothing in the record that would lead us to question this assertion. In this case, therefore, we think the Army

had a reasonable basis for structuring the procurement as it did on the basis of anticipated efficiencies and economies of scale.

The protest is denied.



James F. Hinchman
General Counsel